

**Hospitality & Travel, Inc. d/b/a The Toledo Inn and Teamsters, Chauffeurs, Warehousemen and Helpers Union Local 20 a/w International Brotherhood of Teamsters, AFL-CIO. Case 8-CA-24750**

January 8, 1993

**DECISION AND ORDER**

**BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH**

Upon a charge filed by the Union on July 20, 1992, the General Counsel of the National Labor Relations Board issued a complaint on September 1, 1992, against Hospitality & Travel, Inc. d/b/a the Toledo Inn, the Respondent, alleging that it has violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 7, 1992, the General Counsel filed a Motion for Summary Judgment. On December 10, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated November 13, 1992, notified the Respondent that unless an answer was received by close of business, November 20, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, an Ohio corporation, with an office and place of business in Northwood, Ohio, has been

engaged in the operation of a motel. Annually, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000, and purchased and received at its Northwood, Ohio facility goods valued in excess of \$1500 from points directly outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All waitresses, busboy/dishwashers/kitchen helpers, hostesses/cashiers, cooks, bartenders, housekeeping employees, banquet waitresses, desk clerks, night auditors, bellmen, secretaries, maintenance employees, laundry employees, and housemen employed by the Employer at its 2426 Oregon Road, Northwood, Ohio facility, excluding all professional employees, guards and supervisors as defined in the Act.

Since about March 1991 and at all material times, Teamsters, Chauffeurs, Warehousemen and Helpers Union Local 20 a/w International Brotherhood of Teamsters, AFL-CIO (the Union) has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective by its terms from April 15, 1991, through April 14, 1994.

At all times since March 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

The Respondent has failed to continue in effect all the terms and conditions of employment of the agreement by:

(a) Since on or about April 1, 1992, failing to grant employees the wage increase described in article 11 of the collective-bargaining agreement.

(b) Since on or about January 20, 1992, failing to establish an employee pension plan as described in article 25 of the collective-bargaining agreement.

(c) Since on or about May 1, 1992, failing to make health and welfare contributions as required by article 24 of the collective-bargaining agreement.

Additionally, in or around March 1992, the Respondent, by its Agent and Supervisor Larry W. Johnson at the Respondent's facility, bypassed the Union and dealt directly with its employees and obtaining their agreement to forego the wage increases.

## CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to grant wage increases, establish an employee pension plan, and make health and welfare contributions as required by the collective-bargaining agreement, we shall order the Respondent to comply with the agreement and to make whole the unit employees for its failure to do so as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1979), including any additional amounts applicable to such payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, Hospitality & Travel, Inc. d/b/a the Toledo Inn, Northwood, Ohio, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of employment of the agreement by:

—failing to grant employees the wage increase described in article 11 of the collective-bargaining agreement.

—failing to establish an employee pension plan as described in article 25 of the collective-bargaining agreement.

—failing to make health and welfare contributions as required by article 24 of the collective-bargaining agreement.

(b) Bypassing the Union and dealing directly with the employees and obtaining their agreement to forego the wage increases.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

All waitresses, busboy/dishwashers/kitchen helpers, hostesses/cashiers, cooks, bartenders, house-keeping employees, banquet waitresses, desk clerks, night auditors, bellmen, secretaries, maintenance employees, laundry employees, and housemen employed by the Employer at its 2426 Oregon Road, Northwood, Ohio facility, excluding all professional employees, guards and supervisors as defined in the Act.

(b) Make whole unit employees for any loss of benefits or other expenses suffered as a result of its failure to grant wage increases, establish an employee pension plan, and make health and welfare contributions as required by the collective-bargaining agreement.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Northwood, Ohio, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all the terms and conditions of employment of the agreement with

Teamsters, Chauffeurs, Warehousemen and Helpers Union Local 20 a/w International Brotherhood of Teamsters, AFL-CIO by failing to grant employees the wage increase described in article 11; failing to establish an employee pension plan as described in article 25; and failing to make health and welfare contributions as required by article 24 of the collective-bargaining agreement.

WE WILL NOT bypass the Union and deal directly with the employees to obtain their agreement to forego any wage increases.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative in the unit described below:

All waitresses, busboy/dishwashers/kitchen helpers, hostesses/cashiers, cooks, bartenders, house-keeping employees, banquet waitresses, desk clerks, night auditors, bellmen, secretaries, maintenance employees, laundry employees, and housemen employed by the Employer at its 2426 Oregon Road, Northwood, Ohio facility, excluding all professional employees, guards and supervisors as defined in the Act.

WE WILL make whole unit employees for any loss of benefits or other expenses suffered as a result of our failure to grant wage increases, establish an employee pension plan, and make health and welfare contributions as required by the collective-bargaining agreement.

HOSPITALITY & TRAVEL, INC. D/B/A  
THE TOLEDO INN